

Exhibit 4

COURT REPORTERS
OF AKRON CANTON AND CLEVELAND

**Transcript of the Testimony of
Cheryl L. Detloff**

Taken On: April 21, 2008

Case Number: 2:06-CV-2141-DGC

Case: Soilworks, LLC, vs. Midwest Industrial Supply, Inc.,

Court Reporters of Akron Canton and Cleveland

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UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF ARIZONA

SOILWORKS, LLC, an Arizona)
corporation,)
Plaintiff,)
vs.) CASE NO.
MIDWEST INDUSTRIAL SUPPLY,) 2:06-CV-2141-DGC
INC., an Ohio corporation) ATTORNEYS' EYES
authorized to do business) ONLY PORTIONS
in Arizona,) CONTAINED WITHIN
Defendant.)

Deposition of CHERYL L. DETLOFF, a witness
herein, called by the Plaintiff for Examination
pursuant to the Federal Rules of Civil
Procedure, taken before me, the undersigned,
Binnie Purser Martino, a Registered Diplomatic
Reporter, Certified Realtime Reporter and Notary
Public in and for the State of Ohio, pursuant to
Notice and agreement of counsel at the offices
of Court Reporters of Akron, Canton and
Cleveland, 221 Springside Drive, Akron, Ohio, on
Monday, the 21st day of April, 2008, commencing
at 9:47 o'clock a.m.

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1 APPEARANCES:

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10 On Behalf of the Defendant:
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16 ALSO PRESENT:

17 Chad Falkenberg
18 Robert Vitale
19 ---

1 CHERYL L. DETLOFF
2 of lawful age, a witness herein, having been
3 first duly sworn, as hereinafter certified,
4 deposed and said as follows:

5 EXAMINATION

6 BY MR. DOSEK:

- 7 Q. State your full name, please.
- 8 A. Cheryl L. Detloff. L for Lynn.
- 9 Q. What is your date of birth?
- 10 A. 10/3/64.
- 11 Q. Ms. Detloff, have you ever had your
12 deposition taken before?
- 13 A. No.
- 14 Q. Have you ever testified in court before?
- 15 A. Yes.
- 16 Q. How many times?
- 17 A. I don't recall.
- 18 Q. More than five?
- 19 A. Yes.
- 20 Q. When was the last time you testified in
21 court?
- 22 A. Probably six months ago.
- 23 Q. What kind of a proceeding was that?
- 24 A. Child visitation.
- 25 Q. Okay. You understand that you were just

1 **BY MR. DOSEK:**

2 Q. Which is which?

3 A. I don't recall.

4 Q. Do you know who Todd Hawkins is?

5 A. Yes.

6 Q. How do you know him?

7 A. I used to work with him.

8 Q. What was his job when you worked with him?

9 A. I don't recall his exact title.

10 Q. Was he there when you joined Midwest
11 Industrial Supply?

12 A. No.

13 Q. So he came after you were already there and
14 he is no longer employed there, correct?

15 A. Correct.

16 Q. Did you ever report to him?

17 A. For a period of time, yes.

18 Q. But you don't know what -- do you know what
19 his title was at that time that you reported to
20 him?

21 A. No.

22 Q. Do you know what his job responsibilities
23 were when you reported to him?

24 A. He was a Development Manager.

25 Q. As a Development Manager, do you know what

1 in the court papers?

2 A. Could you be more specific?

3 Q. Are you aware of any of the allegations

4 that have been made by Soilworks against Midwest

5 that Soilworks is asking the court to resolve?

6 A. I have not seen any of that paperwork.

7 Q. And you are not aware of any of that?

8 A. I am aware that there is litigation going

9 on. The specifics, I don't know exactly what

10 their -- you know, their specifics as to what

11 they are counter-suing or suing us for.

12 Q. Are you aware of any of the claims that

13 have been asserted by Midwest against Soilworks?

14 A. I believe patent infringement.

15 Q. Okay. Anything else?

16 A. Oh, shoot. Trademark infringement.

17 Q. Anything else?

18 A. That is it.

19 Q. Okay. Are you aware of which product or

20 products Midwest Industrial Supply believes

21 infringe its patent?

22 A. Yes.

23 Q. Which?

24 A. EnviroKleen, EK35. Or could you please

25 restate that?

1 he did on a day-to-day basis?

2 A. I don't recall.

3 Q. So you did know at one time, and you have

4 forgotten, is that what you are telling me?

5 A. No. I don't remember the specifics of what

6 he did day-to-day. Could you please be more

7 specific maybe?

8 Q. Tell me generally, what did he do on a

9 day-to-day basis, if you don't remember

10 specifically.

11 A. He worked with some of the field

12 development techniques of our products, as well

13 as developing new product formulations.

14 Q. What does field development techniques

15 mean?

16 A. Working in the field with our applications

17 personnel to develop new techniques for applying

18 and testing those techniques.

19 Q. Have you seen any of the pleadings that

20 have been filed in this litigation?

21 A. No.

22 Q. Any of the court papers?

23 A. No.

24 Q. Are you aware of any of the claims that

25 have been asserted by Soilworks against Midwes-

1 Q. Yes. It probably wasn't worded very well.
2 I am asking if you are aware of which product or
3 products of Soilworks are alleged to be
4 infringing any patent owned by Midwest
5 Industrial Supply?

6 A. Yes. Durasoil.

7 Q. Any others?

8 A. No, not that I am aware of.

9 Q. Have you done anything in your employment
10 with Midwest to determine if, in fact, Durasoil
11 infringes any patent?

12 **MR. SKERIOTIS:** Objection. If you
13 learned anything with respect to that answer
14 pursuant to this litigation after it started or
15 pursuant to preparation for litigation, then I
16 instruct you not to answer. If you know that
17 answer prior to any involvement by any lawyer,
18 then you can answer that question.

19 **THE WITNESS:** Could you be more
20 specific in your question?

21 **BY MR. DOSEK:**

22 Q. Have you done anything in the course of
23 your work to determine one way or another
24 whether the Durasoil product infringes on
25 Midwest's patent?

29

1 **MR. SKERIOTIS:** Same objection.
 2 And again, unless it is outside of the scope of
 3 a lawyer representing Midwest and efforts
 4 regarding litigation, then I instruct you not to
 5 answer.

6 **THE WITNESS:** You are asking me
 7 if I have done anything personally?

8 **BY MR. DOSEK:**

9 **Q.** Yes.

10 **MR. SKERIOTIS:** But if it is within
 11 the scope of your employment pursuant to
 12 litigation, then I instruct you not to answer.

13 **THE WITNESS:** I myself have not
 14 done anything outside of the scope of this
 15 litigation to determine if Durasoil infringes
 16 upon the patent.

17 **BY MR. DOSEK:**

18 **Q.** Have you been asked to do anything?

19 **MR. SKERIOTIS:** Same objection.

20 **BY MR. DOSEK:**

21 **Q.** Have you been asked to conduct any kind of
 22 analysis or any kind of test on the Durasoil
 23 product to make any determination as to whether
 24 or not it infringes any patent owned by Midwest?

25 **MR. SKERIOTIS:** Same objection.

1 testing to make -- to determine whether or not
 2 Durasoil infringes on any patent owned by
 3 Midwest?

4 **MR. SKERIOTIS:** Same objection.

5 **THE WITNESS:** There has been no
 6 testing at Midwest Industrial Supply to make
 7 that determination.

8 **BY MR. DOSEK:**

9 **Q.** Has there been testing that you are aware
 10 of at any other facility in an effort to make
 11 that determination?

12 **MR. SKERIOTIS:** Same objection.

13 **THE WITNESS:** Yes, there was.

14 **BY MR. DOSEK:**

15 **Q.** Where?

16 **A.** Petro-Canada.

17 **Q.** When was that done?

18 **A.** I don't recall.

19 **Q.** How long ago?

20 **MR. SKERIOTIS:** Remember the scope
 21 of his question, so we are accurate in the
 22 record. It was for the purposes of
 23 infringement, he is asking. Is that right,
 24 Scott? Has there been any testing done for
 25 purposes of infringement?

30

1 **THE WITNESS:** I have not done any
 2 testing.

3 **BY MR. DOSEK:**

4 **Q.** My question is, have you been asked to do
 5 any such testing?

6 **MR. SKERIOTIS:** Same objection.

7 **THE WITNESS:** I have not been
 8 asked to do any such testing personally.

9 **BY MR. DOSEK:**

10 **Q.** Has anyone at, any individual at Midwest
 11 Industrial Supply, to your knowledge, been asked
 12 to do anything to try to determine whether or
 13 not Durasoil violates any patent owned by
 14 Midwest?

15 **MR. SKERIOTIS:** Objection, same
 16 objection. Again, if it is pursuant to the
 17 scope of litigation and with a lawyer present, I
 18 instruct you not to answer.

19 **THE WITNESS:** I specifically do
 20 not know of anyone who has been asked to do
 21 something to determine that.

22 **BY MR. DOSEK:**

23 **Q.** Okay. Do you know if any attempt has been
 24 made at Midwest Industrial Supply to do any kind
 25 of chemical analysis or any other kind of

1 **BY MR. DOSEK:**

2 **Q.** For purposes of determining whether there
 3 was an infringement, yes.

4 **A.** Then I don't recall.

5 **Q.** Okay. What do you recall about the testing
 6 that was done at Petro-Canada of the Durasoil
 7 product?

8 **A.** I have not reviewed the documents in some
 9 time. I would have to review the documents.

10 **Q.** So without reviewing the documents, you
 11 don't remember anything about that?

12 **A.** No, I do not recall.

13 **Q.** Was a Durasoil product sample sent to
 14 Petro-Canada?

15 **A.** Yes.

16 **Q.** Did you participate in doing that?

17 **A.** Yes.

18 **Q.** Was it before the issuance of the '266 or
 19 '270 patent by the United States Patent and
 20 Trademark Office or after?

21 **A.** I don't recall.

22 **Q.** Do you know when those patents were issued?

23 **A.** After 1998.

24 **Q.** That is all you know?

25 **A.** That is all I know, yes.

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